No. 88-1569

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In the Supreme Court of the United States

OCTOBER TERM, 1988

RICHARD H. AUSTIN, Michigan Secretary of State, and FRANK J. KELLEY, Michigan Attorney General,
APPELLANTS,

v.

MICHIGAN STATE CHAMBER OF COMMERCE, a non-profit Michigan Corporation, APPELLEE.

ON APPEAL FROM THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

BRIEF OF THE FEDERAL ELECTION COMMISSION AS AMICUS CURIAE IN SUPPORT OF THE APPELLANTS

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April 12, 1989

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INTEREST OF THE AMICUS CURIAE

The Federal Election Commission ("FEC" or "the Commission") is the independent agency established by Congress to administer and "formulate policy with respect to" the Federal Election Campaign Act of 1971, as amended ("FECA"), *codified* at 2 U.S.C. §§ 431-455. *See* 2 U.S.C. § 437c(b)(1).[1] The Com-

[1] The Federal Election Campaign Act of 1971, Pub. L. No. 92-225, 86 Stat. 3 (1972), was amended by the Federal Elec-

mission is authorized to appear and defend against actions with regard to the administration and enforcement of the FECA, as well as the Presidential Election Campaign Fund Act, 26 U.S.C. §§ 9001-9013 and the Presidential Primary Matching Payment Account Act, 26 U.S.C. §§ 9031-9042. *See* 2 U.S.C. § 437d(a)(6); 26 U.S.C. §§ 9010, 9040. This brief is submitted in support of the Appellants pursuant to Supreme Court Rule 36.4.

The Commission is vested with "exclusive jurisdiction" over the administration and civil enforcement of the FECA. 2 U.S.C. § 437c(b)(1). Sections 437g(a)(1)-(a)(4) set out a detailed administrative procedure by which the Commission determines if there is probable cause to believe that a person has violated the FECA. Upon completion of those administrative proceedings, if the Commission is unable to resolve a matter through conciliation, it is authorized to bring a *de novo* civil suit to enforce the law in the appropriate district court. 2 U.S.C. § 437g(a)(6)(A). In addition to civil enforcement, the Commission promulgates regulations, 2 U.S.C. § 438(d), and issues formal advisory opinions in response to requests by any person relating to specific transactions or activities under the FECA. 2 U.S.C. § 437f(a)(1).

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tion Campaign Act Amendments of 1974, Pub. L. No. 93-443, 88 Stat. 1263, by the Federal Election Campaign Act Amendments of 1976, Pub. L. No. 94-283, 90 Stat. 475, by the Social Security Amendments of 1977, Pub. L. No. 95-216, Title V, Sec. 502, 91 Stat. 1509, 1565, by the Federal Election Campaign Act Amendments of 1979, Pub. L. No. 96-187, 93 Stat. 1339 (1980), by the Trademark Clarification Act of 1984, Pub. L. No. 98-620, Title IV, Sec. 402, 98 Stat. 3335, 3357, and by Pub. L. No. 100-352, Sec. 6(a), 102 Stat. 662, 663 (June 27, 1988).

The FECA generally prohibits any corporation from using its corporate treasury funds to make "a contribution or expenditure in connection with any [federal] election." 2 U.S.C. § 441b(a). However, the FECA permits a corporation to use its corporate treasury funds to administer a separate segregated fund to be used for political purposes. 2 U.S.C. § 441b(b)(2)(C). Separate segregated funds are defined as political committees by the FECA, 2 U.S.C. § 431(4)(B), and like other political committees are subject to recordkeeping and reporting requirements. *See* 2 U.S.C. §§ 432-434. The corporation itself can direct the making of contributions and expenditures from this fund. *See Pipefitters v. United States*, 407 U.S. 385, 413-426 (1972). Contributions to a separate segregated fund may be solicited only from the corporation's stockholders, executive and administrative personnel and their families, and, if a membership corporation, from members. 2 U.S.C. § 441b(b)(4).

In *FEC v. Massachusetts Citizens For Life* (*"MCFL"*), 479 U.S. 238 (1986), this Court addressed a nonprofit corporation's First Amendment challenge to the FECA's requirement that corporate election expenditures be financed through separate segregated funds. The Court determined that this requirement could not constitutionally be applied to MCFL because the purposes of the statute were inapplicable to MCFL's particular characteristics. The Court specified that MCFL had three features that were essential to its holding, one of which was that MCFL had not been established by a business corporation and had a firm policy against accepting money from business corporations. 479 U.S. at 264.

The instant case concerns a First Amendment challenge, brought by the Michigan State Chamber of

Commerce ("the State Chamber"), to Mich. Comp. Laws ("MCL") § 169.254(1), a provision of the Michigan Campaign Finance Act ("the Michigan Act") which, like 2 U.S.C. § 441b, requires that corporations finance political contributions and expenditures through separate segregated funds.[2] The court below determined that section 54(1) of the Michigan Act is modeled on the FECA and that this Court's analysis in *MCFL* regarding 2 U.S.C. § 441b is, therefore, applicable to section 54(1) (J.S. App. 13a n.3).[3] The court then held that the *MCFL* decision made it unconstitutional to apply section 54(1) to the State Chamber's election expenditures, even though more than 75% of the State Chamber's treasury consisted of funds received from its business corporation members (J.S. App. 24a-28a).

The Commission has a vital interest in this case because the lower court's decision erroneously expands the impact of this Court's ruling in the *MCFL* case

[2] Section 54(1) of the Michigan Act prohibits a corporation from making, *inter alia*, independent expenditures "in assistance of, or in opposition to the nomination or election of a candidate" for state office. MCL §§ 169.254(1), 169.206(1). However, it permits a corporation to establish a separate segregated fund, MCL § 169.255(1), and solicit contributions to that fund from a restricted class including stockholders, officers, directors, managerial and administrative personnel and their spouses, and members of a membership corporation who are individuals. MCL §§ 169.255(3)(a)-(d). A separate segregated fund under the Michigan Act is required to report as a political committee or independent committee. MCL §§ 169.208(2), 169.211(2).

[3] "J.S. App. ——" references are to the consecutively numbered pages of the Appendix to the Jurisdictional Statement filed in this Court. "C.A. App. ——" references are to the pages of the Joint Appendix filed in the court of appeals.

on the constitutionality of the FECA, and will seriously interfere with the Commission's ability to enforce the FECA.

STATEMENT OF THE CASE

The State Chamber is a nonprofit Michigan corporation established in 1959 to serve the interests of the Michigan business community. More than 75% of the State Chamber's 8,000 members are business corporations (J.S. App. 3a, 41a). It is funded primarily by annual dues which its corporate and noncorporate members are required to pay (J.S. App. 23a).

In June 1985, the State Chamber decided to place a paid advertisement in the *Grand Rapids Press* in support of a candidate in a primary election for the Michigan House of Representatives (J.S. App. 4a, 42a-43a). Although the State Chamber's separate segregated fund, the Michigan State Chamber of Commerce Political Action Committee, had ample funds to pay for the advertisement in compliance with the Michigan Act,[4] the State Chamber decided it wanted to pay for the advertisement with funds from its corporate treasury instead (J.S. App. 6a-7a). Anticipating that its proposed activities would be found in violation of the Michigan Act, the State Chamber brought this action seeking a declaration that section 54(1) was unconstitutional and an injunction against its enforcement (J.S. App. 4a, 43a).

The court of appeals concluded that this case was controlled by this Court's holding in *FEC v. Massa-*

[4] The State Chamber's separate segregated fund projected having over $140,000 to spend in the 1986 elections (C.A. App. 164).

chusetts Citizens for Life, 479 U.S. 238 (1986), that the similar federal prohibition of corporate election expenditures could not constitutionally be applied to the corporation at issue in that case. The court below acknowledged that the State Chamber receives more than 75% of its funding from business corporations (J.S. App. 25a) and it also noted that one of the three features identified by this Court as essential to its holding was that MCFL did not accept contributions from business corporations (J.S. App. 24a). The court nevertheless decided that the State Chamber was covered by the *MCFL* holding because the Michigan Act's requirements for reporting independent expenditures ensured that the Chamber's expenditures from the funds provided by its corporate members would not be "undisclosed" (J.S. App. 25a-26a).

ARGUMENT

THE DECISION OF THE COURT OF APPEALS CONFLICTS WITH THIS COURT'S PRECEDENT AND WILL SERIOUSLY UNDERMINE THE LONGSTANDING STATUTORY PROHIBITION ON CORPORATE ELECTION EXPENDITURES

In *FEC v. Massachusetts Citizens for Life* (*"MCFL"*), 479 U.S. 238 (1986), a closely divided Court held that the First Amendment precluded application of 2 U.S.C. § 441b, a provision of the Federal Election Campaign Act, to require a small, informally organized, incorporated advocacy group to finance its independent expenditures in connection with federal elections from a separate segregated fund. The Court concluded that requiring such a group to undertake the formal organization necessary to operate a separate segregated fund might impermissibly discourage it from engaging in protected

campaign speech. *FEC v. Massachusetts Citizens for Life*, 479 U.S. at 254-255. However, the Court carefully limited the reach of its decision, describing as "essential" to its ruling the fact that MCFL had not been established by a business corporation and had a firm policy against accepting money from business corporations. *Id.* at 263-264.

Relying exclusively upon this Court's decision in *MCFL*, the court below found it unconstitutional to apply section 54(1) of the Michigan Campaign Finance Act, which was modeled on 2 U.S.C. § 441b, to the Michigan State Chamber of Commerce—a corporation that receives at least 75% of its money from the business corporations that make up the bulk of its membership, whose primary purpose is serving the interests of business, and which operates a separate segregated fund that has long been a potent force in Michigan electoral politics. This decision would permit virtually any trade association or other nonprofit group established by business corporations to freely spend any funds received from its corporate members to affect candidate elections. This would nullify the explicit limitations this Court placed upon its decision in *MCFL* and open an avenue through which virtually unlimited amounts of business corporation money could be diverted to electoral campaigns.

The decision of the court of appeals conflicts with the construction of the *MCFL* opinion adopted by the Federal Election Commission, the expert agency created by Congress to administer the federal campaign finance laws that were the subject of that opinion, and of a federal district court.[5] It would substan-

[5] *See* Advisory Opinion 1987-7, 1 Fed. Election Camp. Fin. Guide [CCH] ¶ 5889 (April 6, 1987). ("The Court qualified

tially undermine congressionally mandated limitations upon the use of corporate wealth to influence the outcome of federal elections which have been in effect for more than 40 years. Indeed, the legislative history reflects specific Congressional intent to bar business associations like chambers of commerce from serving as conduits for business corporation funds.[6]

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its exemption for MCFL by setting out 'three features essential to' its holding. One feature was the fact that MCFL's policy is not to accept contributions from business corporations or labor unions. You have stated, however, that your membership does include corporations and that you accept corporate contributions as permitted by your bylaws . . . . As a result, USDC clearly fails to satisfy the MCFL standard for exemption from the expenditure prohibition of section 441b and is still subject to that provision."); *United States Defense Committee v. FEC*, No. 84-CV-450 (N.D.N.Y. April 27, 1988) (unpublished order) ("[T]he decision [in *MCFL*] does not protect [USDC] because [USDC], one, receives funds from corporations; and, two, . . . its membership includes other corporations which contribute to [USDC's] treasury. In this [c]ourt's judgment, the proposed activities of the U.S. Defense Committee squarely fall within Section 441[b], and the U.S. Defense Committee is a corporation which is not protected by the recent U.S. Supreme Court decision.") (App. 4a) (A copy of this opinion is included in the Appendix at the back of this brief.), *vacated on other grounds*, 861 F.2d 765 (2d Cir. 1988). Two other nonprofit corporations that accept funding from business corporations have raised defenses based upon this Court's decision in *MCFL* in pending lawsuits to enforce 2 U.S.C. § 441b. *FEC v. National Organization for Women, Inc.*, No. 87-2269 (D.D.C. filed August 14, 1987); *FEC v. National Rifle Association*, No. 85-1018 (D.D.C. filed March 29, 1985).

[6] During the Senate debates on the original statutory ban on corporate election expenditures, Senator Taft repeatedly confirmed this intention.

> Such an association could receive money by direct contributions from individual members, just as the CIO-PAC can properly operate as a political organization, raising its funds from individual members. In the same way the National Manufacturers Association could do the same thing. But no corporation could contribute to the National Manufacturers Association. . . .
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> * * * *
>
> Of course, if the Chamber of Commerce were a corporation, as I think it is, it would be clearly illegal. In any event, so long as the money comes from corporations, and with their knowledge, I think it would be clearly illegal anyway, and they would be participating as corporations in spending for political purposes.
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> * * * *
>
> [I]f an association of manufacturers accepts contributions from corporations and others that violate the laws by making contributions for political purposes, I think it will be an accessory with those corporations and will be liable under the act.

93 Cong. Rec. 6438, 6447 (1947) *reprinted in* II NLRB, *Legislative History of the Labor Management Relations Act, 1947* at 1530, 1531, 1548 (1948).

[7] We agree with the Appellants that this Court has jurisdiction over this appeal pursuant to 28 U.S.C. § 1254(2), since the recent amendment of that provision was not effective until after the decision was rendered in this case. However, even if the Court finds that jurisdictional provision inapplicable, the legislative history of the amendment indicates that Congress expected the Court to continue to review, on writ of *certiorari*, decisions which invalidate Acts of Congress. H.R. Rep. No. 100-660, 100th Cong., 2d Sess. at 11, n.24 (1988). Although the appellate court here did not rule directly on the constitutionality of a federal statute, section 54(1) of the Michigan Act was modeled on 2 U.S.C. § 441b, and the court of appeals decision was an application

Such significant inroads in a statute Congress has for so many years found necessary to protect the integrity of candidate elections should not be permitted without plenary review by this Court.[7]

A. Section 54(1) Of The Michigan Campaign Finance Act Does Not Restrict The State Chamber's Political Speech

In *FEC v. Massachusetts Citizens for Life*, a majority of this Court concluded that the administrative and financial burdens of establishing and maintaining a separate segregated fund to finance election expenditures were substantial enough to discourage some small informal organizations like the one in that case from engaging in political speech at all.

> [S]uch duties require a far more complex and formalized organization than many *small groups* could manage. Restriction of solicitation of contributions to "members" vastly reduces the sources of funding for organizations with either few or no formal members, directly limiting the ability of such organizations to engage in core political speech . . . . Faced with the need to assume a more sophisticated organizational form . . . and to monitor garage sales lest nonmembers take a fancy to the merchandise on display, it would not be surprising if at least some groups decided that the contemplated political activity was simply not worth it.

479 U.S. at 254-255 (emphasis added). For these reasons, the Court concluded that the statute's "practical effect on MCFL in this case is to make engaging in protected speech a severely demanding task." *Id.* at 256.[8]

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of a ruling by this Court on the constitutionality of that provision. Since the lower court's decision effectively calls the constitutionality of the federal statute into question, there is ample reason for the Court to grant a writ of *certiorari*. *See Heckler v. Edwards*, 465 U.S. 870, 882-884 (1984).

[8] This opinion also listed among the administrative burdens on MCFL's speech the Act's requirements that separate

None of these concerns are applicable to the State Chamber. The State Chamber is a state-wide organization that has been in existence since 1959. Unlike MCFL, which was funded by voluntary donations, the State Chamber has a steady source of financial support from the dues which its 8,000 members are required to pay to obtain the many benefits of membership. More importantly, the State Chamber has been operating a sizable separate segregated fund since 1977 (J.S. App. 42a), and there is no evidence that it has been unable to publicize its political views adequately through the political expenditures it has made from that fund in every election since 1977.[9] To the contrary, the State Chamber has been highly successful in the electoral activities financed through its separate segregated fund, and most of the candidates it has supported in recent years have won

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segregated funds, like other political committees, "adopt specific accounting procedures" and "file periodic detailed reports." 479 U.S. at 255. However, only four Justices joined in this portion of the opinion, and Justice O'Connor filed a separate concurring opinion to make clear her view that "the significant burden on MCFL in this case comes not from the disclosure requirements that it must satisfy, but from the additional organizational restraints imposed upon it by the Act." *Id.* at 266. Accordingly, a majority of the Court rejected the suggestion in the plurality opinion that the Act's recordkeeping and disclosure requirements could be a cognizable burden on MCFL's First Amendment rights.

[9] The State Chamber has an eligible class of approximately 50,000 individuals from which it can solicit contributions to its separate segregated fund under the Michigan Act (C.A. App. 179) and it has been quite successful in doing so. During the 1983-84 election cycle, the separate segregated fund raised over $102,000 and it projected having more than $140,000 to spend in the 1986 primary and general elections (C.A. App. 164, 184).

(J.S. App. 66a-67a). Indeed, the Chamber's success and expertise in operating a separate segregated fund is so well recognized that other corporations and chambers of commerce have turned to it for assistance and instruction in how to form and operate separate segregated funds (C.A. App. 180-184).

In short, in contrast to MCFL, the State Chamber is a large, formally organized corporation which has *already* adopted all of the organizational forms required to successfully finance its political speech through a separate segregated fund. Since the State Chamber is not the kind of corporation whose political speech could be inhibited because of its "inability to form" a separate segregated fund, *FEC v. Massachusetts Citizens for Life*, 479 U.S. at 255 n.8, there is no basis for finding that the Michigan statute violates its First Amendment rights.

B. Compelling State Interests Are Served By Application Of Section 54(1) To The State Chamber

In *MCFL*, this Court acknowledged that section 441b's regulation of election expenditures by most corporations serves the substantial governmental interest in maintaining the integrity of candidate elections. *FEC v. Massachusetts Citizens for Life*, 479 U.S. at 256-259. Reaffirming the need to curb the use in elections of "the 'substantial aggregations of wealth amassed by the special advantages which go with the corporate form of organization,'" which it had already found compelling in *FEC v. National Right to Work Committee*, 459 U.S. 197, 207 (1982), the Court explained in *MCFL* that "the corrosive influence of concentrated corporate wealth" could threaten "the integrity of the marketplace of political ideas."

> Direct corporate spending on political activity raises the prospect that resources amassed in the economic marketplace may be used to provide an unfair advantage in the political marketplace. . . . The availability of these resources may make a corporation a formidable political presence, even though the power of the corporation may be no reflection of the power of its ideas.

FEC v. Massachusetts Citizens for Life, 479 U.S. at 257-258. By requiring corporations to finance their spending from separate segregated funds made up of voluntary individual contributions for political purposes, the Court said, "§ 441b seeks to prevent this threat to the political marketplace." *Id.* at 258.[10]

The Court majority ultimately found that 2 U.S.C. § 441b could not constitutionally be applied to MCFL because "the concerns underlying the regulation of corporate political acivity are simply absent with regard to MCFL." *FEC v. Massachusetts Citizens for Life*, 479 U.S. at 263. Observing that "the class of organizations affected by our holding today" may be "small," the Court carefully set out three features of MCFL that it specified as "essential to our holding that it may not constitutionally be bound by § 441b's restriction on independent spending." *Id.* at 263-264. One of these features was that MCFL had not been established by a business corporation and it had a firm policy against accepting contributions from business corporations. "This prevents such corporations

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[10] Congress's explicit determination (*see Pipefitters v. United States*, 407 U.S. at 429-431 (*quoting* 117 Cong. Rec. 43,381 (1971))) that the regulations now contained in section 441b are an appropriate way to attain important governmental objectives in light of the applicable constitutional concerns "warrants considerable deference" from this Court. *FEC v. National Right to Work Committee*, 459 U.S. at 209.

from serving as conduits for the type of direct spending that creates a threat to the political marketplace." *Id.* at 264. This criterion reflects the intention expressed by Congress when the ban on corporate expenditures was first enacted, that business associations not be able to convert their corporate members' dues into political expenditures that those corporations themselves would be prohibited from making. See p. 8, n.6, *supra.*

The State Chamber clearly fails to satisfy this criterion. The State Chamber not only accepts money from business corporations but most of its membership consists of corporations. Indeed, the court of appeals acknowledged that 75% of the State Chamber's treasury funds come from business corporations (J.S. App. 25a). Moreover, the State Chamber appears to have been established at least in part by business corporations (J.S. App. 20a), and its primary purpose of existence is to serve the interests of business (J.S. App. 41a). Thus, the State Chamber represents precisely the sort of conduit for business corporation funds that this Court was at pains to exclude from its ruling in *MCFL.* As Judge Merrit said in his dissent from the denial of rehearing *en banc* below (J.S. App. 35a-36a) (emphasis in original):

> The panel . . . describes the Chamber as "comprised of about eight thousand voluntary members, approximately *seventy-five percent of whom are corporations.* . . ." Thus, the panel—without recognizing it—characterized the Michigan Chamber so as to place it outside the narrow exception carved out by the Supreme Court. . . . [T]he Michigan Chamber of Commerce may now act as a conduit for large sums of money contributed by its corporate members—General Motors, Ford, Chrysler, etc.—in support of the corporations' favorite candidates.

The appellate court's suggestion (J.S. App. 25a-26a) that the Michigan Act's reporting requirements satisfy this concern is simply wrong. In *MCFL,* 479 U.S. at 262, this Court discussed at length the comparable reporting requirements contained in the federal statute, yet it still found MCFL's policy against accepting funds from business corporations to be essential to its holding. Requiring the State Chamber to report its election expenditures would do nothing to prevent it from *acting* as a conduit for corporate funds, because money the State Chamber receives from its corporate members would still be used to fund those expenditures. It was MCFL's clear inability to *act* as a conduit because it would accept no corporate funds that this Court found crucial to its conclusion that the FECA's purposes were inapplicable.

In sum, section 54(1) has been carefully limited to restricting only the use of a corporation's treasury funds to influence Michigan elections. Through its separate segregated fund, a corporation can make independent expenditures communicating to the public the corporation's support for, or opposition to, any candidate and this requirement has not inhibited the State Chamber from effectively supporting the candidates of its choice. In fact, section 54(1) would not prohibit the State Chamber's proposed independent expenditure in this case, so long as it is financed from the separate segregated fund, which had more than sufficient funds to do so. In addition, because its treasury is made up in part of funds received from business corporations, application of section 54(1) to the State Chamber serves legislative interests this

Court has previously recognized as substantial. There is, therefore, ample reason for this Court to review the erroneous decision of the court of appeals that this important statute, designed to protect the integrity of the electoral process, cannot be applied to corporations like the one in this case.

CONCLUSION

The Court should note probable jurisdiction in this case and set it for briefing and argument on the merits.

Respectfully submitted,

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April 12, 1989

APPENDICES

APPENDIX A

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK

84-CV-450

UNITED STATES DEFENSE COMMITTEE, PLAINTIFF,

-against-

FEDERAL ELECTION COMMISSION, ET AL., DEFENDANTS.

Proceedings in the above-entitled matter, 1. Plaintiff's Motion for Summary Judgment; 2. Defendant's Motion to Dismiss, came on before the United States District Court, Northern District of New York, at the U.S. Post Office and Courthouse, Broadway, Albany, New York, on Friday, April 1, 1988, before Hon. Con. G. Cholakis, District Court Judge.

DECISION

THE COURT: Please be seated.

The Court has reviewed all the papers that have been submitted to it. It has listened with a great deal of interest to the arguments presented to the Court, and the Court recognizes, assumes that the litigants in this matter are probably expecting a lengthy learned decision to be handed down. Off the record.

(Off the record discussion.)

THE COURT: On the record. The Court is also aware of the time constraints within which this matter is brought before it, although at first blush it must confess that since this was a matter that was commenced in the year 1984 that the time constraints should not influence and control the Court's actions.

However, the Court has given a great deal of thought to this matter and believes that it can distill all the arguments into two or three relatively simple steps.

1. The Court must determine whether or not it has jurisdiction to determine the dispute between the parties.

The Defendants allege that the jurisdiction of the Court is extremely limited, that Congress has set forth precisely under what situations or what circumstances the litigant can come into Court for review of the FEC's determinations, and that this procedure does not come—this matter does not come within those deliniated in the FECA.

The Court recognizes that the proceeding that has been brought by the Plaintiff or the Plaintiffs is not deliniated within FECA. However, the Court is of the opinion that it has broad powers to review matters that are conducted or performed by various federal agencies, and unless the Court's power is explicitly restricted by statute or by Congress, that the Court's jurisdiction is not limited.

In this case, while the Congress has deliniated several types of controversies that could specifically go to Court, it has not limited what the Court perceives as its authority to review, and the Court determines that it has the power to entertain the proceeding which has been brought before it.

Once having determined that it has the power, it must review some of the arguments which have been advanced. While it was not orally advanced in the Court, the papers indicate that the Plaintiffs felt that they did not receive the equal protection under the 14th Amendment because the statute specifically exempted from its prohibition the institutionalized press.

The Court is of the opinion that the exemption of the institutionalized press from the prohibition of 441-B has a valid basis in that the public has a need to know the issues which surround these federal election campaigns; and, further, the equal protection argument must fall because it is clear that the statute does apply to the institutionalized press when they exceed or go outside their legitimate press function.

It is, therefore, this Court's judgment, that the equal protection argument of the Plaintiffs must fall.

It is also clear from reading Section 441-B that it is unlawful for any corporation whatever to make expenditure in connection with any election at which —presidential and vice-presidential election—or senators or representatives in Congress are to be voted for.

The portions that I have just read into the record are only those portions which I feel are applicable to this case. We must now determine what it is that the Plaintiff corporation seeks to do.

It is clear from all papers presented that it is the intent of the Plaintiff to send out certain correspondence—intends to send out correspondence to the general public identifying various candidates for public office and pointing out those candidates who agree with the principles advocated by the Plaintiff, and

to point out those candidates who advocate principles different than the Plaintiff's principles. The Plaintiff would say that unless there is an explicit request in this correspondence that the recipient of the letters vote one way or another, that it is not in effect electioneering.

The Court cannot accept the Plaintiff's position, and it is clear from the arguments presented and the papers submitted that what it is that the Plaintiff intends to do does come within the prohibition of 441-B.

The Court must now determine whether the recent decision by the U.S. Supreme Court in the case of the *Federal Election Commission vs. Citizens for Life* gives the Plaintiff any protection.

It is clear that in that case, the U.S. Supreme Court said that this activity would not be prohibited in certain instances.

In this Court's judgment the decision does not protect the Plaintiff because the Plaintiff, one, receives funds from corporations; and, two, pursuant to the stipulations submitted to the Court, Page 4, Subdivision 9, clearly indicates that its membership includes other corporations which contribute to the Plaintiff's treasury.

In this Court's judgment, the proposed activities of the U.S. Defense Committee squarely fall within Section 441-B, and the U.S. Defense Committee is a corporation which is not protected by the recent U.S. Supreme Court decision.

Therefore, Defendant's motion to dismiss is in all respects granted.

MS. KLEIN: Thank you, your Honor.

THE COURT: My law clerks have lived with this for the last several days, and at least one

of them indicates that it is not—and I assume correct—that it is not granting the motion to dismiss. It is granting the summary judgment motion of the Defendant; and, Ms. Klein, I request you submit an appropriate order for my signature.

MS. KLEIN: I will, your Honor.

(Whereupon, the proceedings in the above-entitled matter were concluded.)

APPENDIX B

TITLE 2. THE CONGRESS

Chapter 14—Federal Election Campaigns

Subchapter 1—Disclosure of Federal Campaign Funds

§ 441b. Contributions or expenditures by national banks, corporations, or labor organizations

(a) It is unlawful for any national bank, or any corporation organized by authority of any law of Congress, to make a contribution or expenditure in connection with any election to any political office, or in connection with any primary election or political convention or caucus held to select candidates for any political office, or for any corporation whatever, or any labor organization, to make a contribution or expenditure in connection with any election at which presidential and vice presidential electors or a Senator or Representative in, or a Delegate or Resident Commissioner to, Congress are to be voted for, or in connection with any primary election or political convention or caucus held to select candidates for any of the foregoing offices, or for any candidate, political committee, or other person knowingly to accept or receive any contribution prohibited by this section, or any officer or any director of any corporation or any national bank or any officer of any labor organization to consent to any contribution or expenditure by the corporation, national bank, or labor organization, as the case may be, prohibited by this section.

(b) (1) For the purposes of this section the term "labor organization" means any organization of any kind, or any agency or employee representation committee or plan, in which employees participate and which exists for the purpose, in whole or in part, of dealing with employers con-

cerning grievances, labor disputes, wages, rates of pay, hours of employment, or conditions of work.

(2) For purposes of this section and section 79*l*(h) of title 15, the term "contribution or expenditure" shall include any direct or indirect payment, distribution, loan, advance, deposit, or gift of money, or any services, or anything of value (except a loan of money by a national or State bank made in accordance with the applicable banking laws and regulations and in the ordinary course of business) to any candidate, campaign committee, or political party or organization, in connection with any election to any of the offices referred to in this section, but shall not include—

(A) communications by a corporation to its stockholders and executive or administrative personnel and their families or by a labor organization to its members and their families on any subject;

(B) nonpartisan registration and get-out-the-vote campaigns by a corporation aimed at its stockholders and executive or administrative personnel and their families, or by a labor organization aimed at its members and their families; and

(C) the establishment, administration, and solicitation of contributions to a separate segregated fund to be utilized for political purposes by a corporation, labor organization, membership organization, cooperative, or corporation without capital stock.

(3) It shall be unlawful—

(A) for such a fund to make a contribution or expenditure by utilizing money or

anything of value secured by physical force, job discrimination, financial reprisals, or the threat of force, job discrimination, or financial reprisal; or by dues, fees, or other moneys required as a condition of membership in a labor organization or as a condition of employment, or by moneys obtained in any commercial transaction;

(B) for any person soliciting an employee for a contribution to such a fund to fail to inform such employee of the political purposes of such fund at the time of such solicitation; and

(C) for any person soliciting an employee for a contribution to such a fund to fail to inform such employee, at the time of such solicitation, of his right to refuse to so contribute without any reprisal.

(4) (A) Except as provided in subparagraphs (B), (C), and (D), it shall be unlawful—

(i) for a corporation, or a separate segregated fund established by a corporation, to solicit contributions to such a fund from any person other than its stockholders and their families and its executive or administrative personnel and their families, and

(ii) for a labor organization, or a separate segregated fund established by a labor organization, to solicit contributions to such a fund from any person other than its members and their families.

(B) It shall not be unlawful under this section for a corporation, a labor organization, or a separate segregated fund established by such corporation or such labor organization, to make 2 written solicitations for contributions during the calendar year from any stockholder, executive or administrative personnel, or employee of a corporation or the families of such persons. A solicitation under this subparagraph may be made only by mail addressed to stockholders, executive or administrative personnel, or employees at their residence and shall be so designed that the corporation, labor organization, or separate segregated fund conducting such solicitation cannot determine who makes a contribution of $50 or less as a result of such solicitation and who does not make such a contribution.

(C) This paragraph shall not prevent a membership organization, cooperative, or corporation without capital stock, or a separate segregated fund established by a membership organization, cooperative, or corporation without capital stock, from soliciting contributions to such a fund from members of such organization, cooperative, or corporation without capital stock.

(D) This paragraph shall not prevent a trade association or a separate segregated fund established by a trade association from soliciting contributions from the stockholders and executive or administrative personnel of the member corporations of such trade association and the families of such stockholders

or personnel to the extent that such solicitation of such stockholders and personnel, and their families, has been separately and specifically approved by the member corporation involved, and such member corporation does not approve any such solicitation by more than one such trade association in any calendar year.

(5) Notwithstanding any other law, any method of soliciting voluntary contributions or of facilitating the making of voluntary contributions to a separate segregated fund established by a corporation, permitted by law to corporations with regard to stockholders and executive or administrative personnel, shall also be permitted to labor organizations with regard to their members.

(6) Any corporation, including its subsidiaries, branches, divisions, and affiliates, that utilizes a method of soliciting voluntary contributions or facilitating the making of voluntary contributions, shall make available such method, on written request and at a cost sufficient only to reimburse the corporation for the expenses incurred thereby, to a labor organization representing any members working for such corporation, its subsidiaries, branches, divisions, and affiliates.

(7) For purposes of this section, the term "executive or administrative personnel" means individuals employed by a corporation who are paid on a salary, rather than hourly, basis and who have policymaking, managerial, professional, or supervisory responsibilities.

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